

McConathy, Evelyn H.

From: McConathy, Evelyn H.
Sent: Tuesday, September 30, 2008 11:44 AM
To: 'Bart Classen'; 'bclassen21212@comcast.net'
Cc: Gannon, James L.; Powell, Ashley R.
Subject: RE Appeal for 10/081,705

Importance: High

Bart:

Now that we have all of the original signature on the letters that we hope will overcome the cited prior art by the Examiner in this case, I would like to suggest that we file a Request for Continued Examination (RCE) and return the case to prosecution. We can stay with the Appeal as filed, but the odds are quite high that the Declarations and supporting evidence will not be considered on Appeal, **REDACTED** Plus the Rules state that Declarations do NOT have to be considered on Appeal, as I mentioned previously.

The Rules allow us to return the case to prosecution if we submit the RCE and pay the fee of \$405. If the Declarations are convincing, then we will overcome the cited references at that point. If the Examiner remains unconvinced, then we can go back to Appeal with that evidence already on the record. The cost in professional time would be minimal either way because all of the arguments are already made. But my concern is that otherwise will won't know until the oral hearing whether the Declarations and new evidence were considered or not. If they are not, at the Oral Hearing, the Board will just return the case to prosecution then to permit the Examiner to consider the additional evidence.

Please let me know if you agree. In the alternative, I would be happy to discuss by phone as there are also other considerations in this matter.

Evelyn

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